merce Clause forbids. *Cook* v. *Pennsylvania,* 97 U. S. 566; *Voight* v. *Wright,* 141 U. S. 62. This makes it unnecessary to consider the objections urged under Article I, § 10, cl. 2.

The decree of the District Court is

Affirmed.

KEIFER & KEIFER *v.* RECONSTRUCTION FINANCE CORP. AND REGIONAL AGRICULTURAL CREDIT CORP.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 364. Argued January 31, 1939, February 1, 1939.—Decided February 27, 1939.

1. A Regional Agricultural Credit Corporation, chartered by the Reconstruction Finance Corporation by authority of § 201 (e) of the Emergency Relief and Construction Act of 1932, and which under that statute is government-financed and managed and empowered to make loans to farmers and stockmen for agricultural purposes or for raising and marketing livestock—*held* subject to suit. Pp. 392, *et seq.*

   Neither the statute nor the charter explicitly rendered the Credit Corporation amenable to suit; but among the corporate powers granted the Finance Corporation by the Act creating it was authority "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, state or federal."

2. Whether a governmental corporation is endowed with the Government's immunity from suit depends upon the congressional purpose in creating it. P. 388.

   Immunity is not necessarily to be inferred from the fact that the corporation is doing the Government's work or from the omission of the conventional sue-and-be-sued clause from its charter.

3. Liability to suit of Regional Agricultural Credit Corporations, chartered through the Reconstruction Finance Corporation, is to be inferred from the numerous instances in which Congress, when creating other corporations for purposes not relevantly different from those of the Credit Corporations, has expressly included authority to sue and be sued. This uniform practice reveals a

definite policy which should be given hospitable scope. Failure to include express authority to sue and be sued in the exceptional case of the Credit Corporations is explained by an assumption on the part of Congress that that authority would pass to them from the Reconstruction Corporation already endowed with it. P. 390.

4. Recovery against a Regional Agricultural Credit Corporation for damages resulting from its negligence in failing to provide proper care for livestock delivered to it under a contract of bailment, may be had in contract. P. 394.

5. In the light of recent congressional legislation, liability of a government corporation empowered generally "to sue and be sued" is not confined to suits sounding only in contract. P. 396.

97 F. 2d 812, reversed.

CERTIORARI, 305 U. S. 588, to review the affirmance of a judgment of the District Court (22 F. Supp. 918) dismissing on demurrer an action for damages against the two federal corporations above named. The question brought up by the certiorari concerns only the claim advanced for the Regional Agricultural Credit Corporation that it is immune from suit.

Mr. Ernest B. Perry, with whom *Mr. Robert Van Pelt* was on the brief, for petitioner.

Congressional intent that the "Regional" be subject to suit is expressed by selection of a corporation itself subject to suit to form the "Regional." *Casper* v. *Regional Agricultural Credit Corp.,* 202 Minn. 433.

Such intent is also manifested by the direction that the "Regional" be formed as a corporation. *Bank of U. S.* v. *Planters Bank,* 9 Wheat. 904; *Federal Sugar Refining Co.* v. *U. S. Sugar Eq. Board,* 268 F. 575; *Sloan Shipyards Corp.* v. *U. S. Shipping Board,* 258 U. S. 549; *U. S. Shipping Board* v. *Tabas,* 22 F. 2d 398; *U. S. Shipping Board* v. *Eichberg,* 14 F. 2d 248; *United States* v. *McCarl,* 275 U. S. 1; *North Dakota-Montana Wheat Assn.* v. *United States,* 66 F. 2d 573; *Phillips* v. *U. S. Grain Corp.,* 279 F. 244; *U. S. Grain Corp.* v. *Phillips,* 261 U. S. 106; *Salas* v.

United States, 234 F. 842; *Panama Ry. Co.* v. *Curran,* 256 F. 768; *Panama Ry. Co.* v. *Minnix,* 282 F. 47; *Olson* v. *U. S. Spruce Corp.,* 276 U. S. 462; *United States* v. *Deutsches Kalisyndikat Gesellschaft,* 31 F. 2d 199; *Becker Steel Co.* v. *Cummings,* 296 U. S. 74.

Such intent is implied in the nature of the business the "Regional" was directed to transact. Title 15, § 605B (e) U. S. C.; c. 520, § 201 (e), 47 Stat. 713; *Bank of U. S.* v. *Planters Bank,* 9 Wheat. 904; *U. S. Shipping Board* v. *Harwood,* 281 U. S. 519; *Standard Oil Co.* v. *United States,* 25 F. 2d 480; *Hopkins* v. *Clemson Agricultural College,* 221 U. S. 636; *Central Market* v. *King,* 132 Neb. 380; 302 U. S. 687; *Federal Land Bank* v. *Priddy,* 295 U. S. 229; *North Dakota* v. *Olson,* 33 F. 2d 848; *Gross* v. *Kentucky Board,* 105 Ky. 840.

Such intent is expressed by inclusion of the word "Corporation" in the name of the respondent. *Dartmouth College* v. *Woodward,* 4 Wheat. 518; *Martin* v. *Kentucky Lands Inv. Co.,* 146 Ky. 525; *Barrow S. S. Co.* v. *Kane,* 170 U. S. 100; *Tulare Irrigation Dist.* v. *Shepard,* 185 U. S. 1; *Gilligan* v. *John Gilligan Co.,* 94 Neb. 437.

Immunity of the sovereign from suit does not extend to agents, no agent being an agent for the purpose of committing a tort. *McComb* v. *U. S. Housing Corp.,* 264 F. 589.

Mr. Peyton R. Evans, with whom *Solicitor General Jackson, Assistant Attorney General Whitaker,* and *Messrs. Paul A. Sweeney, Edward J. Ennis,* and *Arthur C. Bernard* and *May T. Bigelow* were on the brief, for respondents.

Instrumentalities of the Federal Government, of which Regional unquestionably is one, are immune from suit, as well as the United States itself, *Lynch* v. *United States,* 292 U. S. 571, 582; cf. *Kawananakoa* v. *Polyblank,* 205 U. S. 349, unless by statute Congress has subjected them

to suit. *Federal Lank Bank* v. *Priddy,* 295 U. S. 229, 231; *Missouri Pacific R. Co.* v. *Ault,* 256 U. S. 554; *The Lake Monroe,* 250 U. S. 246, 249; cf. *The Western Maid,* 257 U. S. 419, 433. There is no distinction between suits against the Government and suits against the property of the United States. *Stanley* v. *Schwalby,* 147 U. S. 508, 512; *Carr* v. *United States,* 98 U. S. 433; *Eastern Transp. Co.* v. *United States,* 272 U. S. 675, 686; *United States* v. *Griffin,* 303 U. S. 226, 239; *United States* v. *Michel,* 282 U. S. 656, 659; *Price* v. *United States,* 174 U. S. 373, 375–376.

Congress has not expressly subjected regionals to suit either in the statute, its history, or in the charter.

Immunity can not be destroyed by the mere inference from the suability of R. F. C. Moreover, the fact that Congress authorized creation of regionals by R. F. C. instead of by the Farm Credit Administration or some other government agency not subject to suit does not support such an inference, because there is no particular or special relation between the power of R. F. C. to create regionals and its power to sue and be sued. There is no more reason to infer that Congress intended that this attribute of suability should pass from R. F. C. to regionals than to infer that any of the other powers of R. F. C., such as its power to create regionals, passed to regionals.

The general rule that a grant of corporate existence implies liability to suit has no application to corporate instrumentalities of the Federal Government which are immune from suit unless this sovereign immunity is abandoned by statute clearly and expressly and not by implication. The presumption of immunity from suit (*Eastern Transp. Co.* v. *United States,* 272 U. S. 675, 686) and the sovereign character of this immunity forbid the view that the mere corporate form of the government instrumentality implies that Congress intended to subject it to suit.

In cases relied on by petitioner the corporations were incorporated under statutes containing express provisions for suability (*Sloan Shipyards* v. *U. S. Fleet Corp.*, 258 U. S. 549) or the Government was merely an incorporator or stockholder in a corporation formed under general laws giving the corporation power to sue and be sued. *United States Bank* v. *Planters Bank*, 9 Wheat. 904.

Nothing in the business which regionals were directed to transact and nothing in the present transaction indicates that Congress intended that regionals, engaged in a public and governmental activity, should be subject to suit.

The petitioner's argument that, even in the absence of an expressed intent, the sovereign's intent to waive immunity from suit may be inferred from the type of activity involved, whether governmental or proprietary, may be applicable to instrumentalities of a state government, but has no application to instrumentalities of the Federal Government which engage only in governmental activities and activities incidental thereto. *Helvering* v. *Gerhardt*, 304 U. S. 405, 411; *New York ex rel. Rogers* v. *Graves*, 299 U. S. 401, 408; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 211; *Osborn* v. *United States Bank*, 9 Wheat. 738. *Federal Land Bank* v. *Priddy*, 295 U. S. 229, distinguished.

Congress has not subjected Regional to suit in tort.

A judgment against Regional would compel it to pay out a sum of money from the public funds in the Treasury of the United States. Such a judgment would have the same effect as if it were rendered directly against the United States for the amount specified. The jurisdiction of a court over such an action is governed by the same rule which determines the court's jurisdiction over a suit against the Government itself. *Smith* v. *Reeves*, 178 U. S. 436, 439.

The present case is an action for tort, and does not rest upon a contract, express or implied. An action will not

lie against the United States for the misfeasance or nonfeasance of its officers or agents. *Gibbons* v. *United States,* 8 Wall. 269, 274; *Langford* v. *United States,* 101 U. S. 341, 345; *Schillinger* v. *United States,* 155 U. S. 163, 169; *Russell* v. *United States,* 182 U. S. 516, 530; *Harley* v. *United States,* 198 U. S. 229, 234; *Peabody* v. *United States,* 231 U. S. 530, 539.

The statutory liability to suit must be regarded as confined to matters within the scope of the corporate powers of the government agency—not unauthorized wrongs upon individuals. *Lyle* v. *National Home,* 170 F. 842; *Overholser* v. *National Home,* 68 Ohio St. 236. The rule of the *National Home* cases has recently been applied to actions in tort against the Home Owners' Loan Corporation, in *Henson* v. *Eichorn,* 24 F. Supp. 842; *Prato* v. *Home Owners' Loan Corp.,* 24 F. Supp. 844; contra, *Herman* v. *Home Owners' Loan Corp.,* 120 N. J. L. 437; *Pennel* v. *Home Owners' Loan Corp.,* 21 F. Supp. 497; and see *Posey* v. *Tennessee Valley Authority,* 93 F. 2d 726.

In England it is settled law that corporations established by the Government for governmental purposes, deriving their funds entirely from the Government, are "servants of the Crown," and "that the presence or absence of incorporation made no difference to the proposition that the heads of government departments are not responsible for the [tortious] acts of subordinates." *Roper* v. *Commissioners,* [1915], 1 K. B. 45, 52.

The legislature does not consent to actions in tort against a state governmental corporation, merely by conferring upon the corporation the power to sue and be sued. *White* v. *Alabama Insane Hospital,* 138 Ala. 479; *Leavell* v. *Western Kentucky Asylum,* 122 Ky. 213; *Maia's Adm.* v. *Eastern State Hospital,* 97 Va. 507; *Smith* v. *New York,* 227 N. Y. 405; *Yolo* v. *Modesto Irrigation Dist.,* 216 Cal. 274; *Bush* v. *Highway Commission,* 329 Mo. 843.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

The Court took this case for review because an important question of federal law called for settlement, particularly in view of a conflict between the court below and the Supreme Court of Minnesota. *Casper* v. *Regional Agricultural Credit Corp.*, 202 Minn. 433; 278 N. W. 896. The question is whether a Regional Agricultural Credit Corporation, in the circumstances presently to be stated, is immune from suit.

On July 21, 1932, Congress enlarged the powers of the Reconstruction Finance Corporation (hereafter called "Reconstruction") established early that year, Act of January 22, 1932, c. 8, 47 Stat. 5, by authorizing it, among other things, to create regional agricultural credit corporations "in any of the twelve Federal land-bank districts." Emergency Relief and Construction Act of 1932, § 201 (e), c. 520, 47 Stat. 709, 713. Each corporation was to have a paid-up capital of not less than $3,000,000 to be subscribed for by Reconstruction, was to be managed by appointees of Reconstruction, and was empowered to make loans to farmers and stockmen for agricultural purposes or for raising and marketing livestock. Accordingly, on September 10, 1932, Reconstruction chartered the Regional Agricultural Credit Corporation of Sioux City, Iowa (hereafter called "Regional"). Regional, in due exercise of its powers, entered into so-called cattle-feeding contracts, whereby it undertook to provide sufficient feed and water for livestock with appropriate security for rendering these services. Failure through negligence to provide proper care for cattle delivered under this arrangement, with resulting damage to the livestock, is the basis of this suit brought by petitioner, plaintiff below, against Reconstruction and Regional. Both de-

fendants demurred on several grounds, of which challenge to the jurisdiction of the court is alone pertinent here. The District Court sustained the demurrers and dismissed the suit. 22 F. Supp. 918. The Court of Appeals affirmed, holding for Reconstruction because its control of Regional had been transferred by Executive Order (No. 6084, dated March 27, 1933, effective May 27, 1933) to the Farm Credit Administration prior to the alleged cause of action, and for Regional because it was found immune from suit. 97 F. 2d 812. Certiorari was granted, directed solely to the latter issue. 305 U. S. 588.

The starting point of inquiry is the immunity from unconsented suit of the government itself. As to the states, legal irresponsibility was written into the Eleventh Amendment; as to the United States, it is derived by implication. *Monaco* v. *Mississippi,* 292 U. S. 313, 321. For present purposes it is academic to consider whether this exceptional freedom from legal responsibility rests on the theory that the United States is deemed the institutional descendant of the Crown, enjoying its immunity but not its historic prerogatives, cf. *Langford* v. *United States,* 101 U. S. 341, 343, or on a metaphysical doctrine "that there can be no legal right as against the authority that makes the law on which the right depends." *Kawananakoa* v. *Polyblank,* 205 U. S. 349, 353. But because the doctrine gives the government a privileged position, it has been appropriately confined.[1]

Therefore, the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. *United States* v. *Lee,* 106 U. S. 196, 213, 221; *Sloan Shipyards*

[1] See Professor Borchard's bibliography in (1934) 20 A. B. A. J. 747, 748, and the collection of authorities in Judge Mack's opinion in *The Pesaro,* 277 F. 473, rev'd, 271 U. S. 562.

v. *U. S. Fleet Corp.*, 258 U. S. 549, 567. For more than a hundred years corporations have been used as agencies for doing work of the government. Congress may create them "as appropriate means of executing the powers of government, as, for instance, . . . a railroad corporation for the purpose of promoting commerce among the States." *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529. But this would not confer on such corporations legal immunity even if the conventional to-sue-and-be-sued clause were omitted. In the context of modern thought and practice regarding the use of corporate facilities, such a clause is not a ritualistic formula which alone can engender liability like unto indispensable words of early common law, such as "*warrantizo*" or "to A and his heirs," for which there were no substitutes and without which desired legal consequences could not be wrought. Littleton, Tenures (Wambaugh ed.) §§ 1, 733.

Congress may, of course, endow a governmental corporation with the government's immunity. But always the question is: has it done so? *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231. Cf. *Helvering* v. *Gerhardt*, 304 U. S. 405, 411–412n. This is our present problem. Has Congress endowed Regional with immunity in the circumstances which enveloped its creation? It is not a textual problem; for Congress has not expressed its will in words. Congress may not even have had any consciousness of intention. The Congressional will must be divined, and by a process of interpretation which, in effect, is the ascertainment of policy immanent not merely in the single statute from which flow the rights and responsibilities of Regional, but in a series of statutes utilizing corporations for governmental purposes and drawing significance from dominant contemporaneous opinion regarding the immunity of governmental agencies from suit.

Because of the advantages enjoyed by the corporate device compared with conventional executive agencies, the exigencies of war and the enlarged scope of government in economic affairs have greatly extended the use of independent corporate facilities for governmental ends.[2] In spawning these corporations during the past two decades, Congress has uniformly included amenability to law. Congress has provided for not less than forty of such corporations discharging governmental functions, and without exception the authority to-sue-and-be-sued was included.[3] Such a firm practice is partly

[2] See Thuiston, Government Proprietary Corporations; Van Dorn, Government Owned Corporations; McDiarmid, Government Corporations and Federal Funds; Field, *Government Corporations: A Proposal* (1935) 48 Harv. L. Rev. 775; McIntyre, *Government Corporations as Administrative Agencies: An Approach* (1936) 4 Geo. Wash. L. Rev. 161.

[3] The American Legion, 41 Stat. 284, 285; Foreign Banking Corporations, 41 Stat. 378, 379; China Trade Act Corporation, 42 Stat. 849, 851; Belleau Wood Memorial Association, 42 Stat. 1441; Federal Intermediate Credit Banks, 42 Stat. 1454, 1455; National Agricultural Credit Corporations, 42 Stat. 1454, 1462; The Grand Army of the Republic, 43 Stat. 358, 359; Inland Waterways Corporation, 43 Stat. 360, 362; The United States Blind Veterans of the World War, 43 Stat. 535, 536; American War Mothers, 43 Stat. 966, 967; Textile Foundation, 46 Stat. 539, 540; Reconstruction Finance Corporation, 47 Stat. 5, 6; Disabled American Veterans of the World War, 47 Stat. 320, 321; Federal Home Loan Bank, 47 Stat. 725, 735; Tennessee Valley Authority, 48 Stat. 58, 60; Corporation of Foreign Security Holders, 48 Stat. 92, 93; Home Owners' Loan Corporation, 48 Stat. 128, 129; Federal Deposit Insurance Corporation, 48 Stat. 162, 172; Production Credit Corporations, Production Credit Associations, Central Bank for Coöperatives, Regional Banks for Cooperatives, 48 Stat. 257, 266; Federal Farm Mortgage Corporations, 48 Stat. 344, 345; Cairo Bridge Commission, 48 Stat. 577, 581; Port Arthur Bridge Commission, 48 Stat. 1008, 1009; Federal Credit Union, 48 Stat. 1216, 1218; Federal Savings & Loan Insurance Corporation, 48 Stat. 1246, 1256; National Mortgage Associations, 48 Stat. 1246, 1253; American National Theater and Academy, 49 Stat.

an indication of the present climate of opinion which has brought governmental immunity from suit into disfavor, partly it reveals a definite attitude on the part of Congress which should be given hospitable scope.[4] It is noteworthy that the oldest surviving government corporation—the Smithsonian Institution—has several times been in the law courts, even in the absence of explicit authority and although the general feeling regard-

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457, 458; Federal Housing Administrator, 49 Stat. 684, 722; Veterans of Foreign Wars of the United States, 49 Stat. 1390, 1391; Disaster Loan Corporation, 50 Stat. 19; Farmers' Home Corporation, 50 Stat. 527; Marine Corps League, 50 Stat. 558, 559; Owensboro Bridge Commission, 50 Stat. 641, 645; Southeastern University, 50 Stat. 697, 698; American Chemical Society, 50 Stat. 798, 799, 800 (semble); United States Housing Authority, 50 Stat. 888, 889, 890; Federal Crop Insurance Corporation, 52 Stat. 72, 73; Niagara Falls Bridge Commission, 52 Stat. 767, 770.

This list does not include, of course, the government corporations chartered under general state or District of Columbia incorporation laws. *Sloan Shipyards* v. *U. S. Fleet Corp., supra.*

[4] Mr. Justice Holmes, on Circuit, gave pioneer expression to inferences to be drawn from legislative policy. "A statute," he wrote in *Johnson* v. *United States,* 163 F. 30, 32 (C. C. A. 1st), "may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before." See also, Taft, C. J., in *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 385–389; Sutherland, J., in *Funk* v. *United States,* 290 U. S. 371, 381; Cardozo, J., in *Van Beeck* v. *Sabine Towing Co.,* 300 U. S. 342, 350–351; Lord Birkenhead, L. C., in *Bourne* v. *Keane* [1919] A. C. 815, 830; Stone, *The Common Law in the United States* (1936) 50 Harv. L. Rev. 4, 13; Landis, *Statutes and the Sources of Law,* Harvard Legal Essays, p. 213.

ing governmental immunity was very different in 1846 from what it has become in our own day. 9 Stat. 102. *Smithsonian Institute* v. *Meech,* 169 U. S. 398; *Smithsonian Institute* v. *St. John,* 214 U. S. 19.

Only two instances have been brought to the Court's attention in which Congress has not explicitly rendered its recent corporate creations amenable to suit. These are the Regionals and the Federal Savings and Loan Associations. 48 Stat. 128, 132–134. It is significant that neither of these classes of corporations was the direct emanation of Congress or the offspring of a general incorporation law under Congressional authority. *Sloan Shipyards* v. *U. S. Fleet Corp., supra.* Each was to come into being through an organ that had theretofore been created by Congress. We put the Federal Savings and Loan Associations to one side, because they are not now before the Court.[5] But the circumstances attending the origination of Regional make it manifest that it was within the considerations that have uniformly led Congress to make its immediate corporate creatures subject to suit. The genesis, functions, and affiliations of Regional all negative the assumption that in its operations it was to be without the law.

Reconstruction is the parent of Regional. When creating it, Congress gave Reconstruction various general corporate powers including authority "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal." 47 Stat. 5, 6. When later Congress authorized Reconstruction to create these Regional Agricultural Credit Corporations, it did so by

[5] It is to be noted that the progenitor of these Associations—the Federal Home Loan Bank Board—is not itself a corporation. But see *Sloan Shipyards* v. *U. S. Fleet Corp., supra,* in which the Fleet Corporation was found subject to suit although Congress authorized its creation through the President.

outlining in a single section of a comprehensive statute the broad scope of this added power for Reconstruction. 47 Stat. 709, 713.[6] Congress naturally assumed that the general corporate powers to which it had given particularity in the original statute establishing Reconstruction would flow automatically to the Regionals from the source of their being. Such, certainly, has been the practical construction of the Regional Agricultural Credit Corporations in the instinctive pursuit of their enterprise. See, e. g., *Hallenbeck* v. *Regional Agricultural Credit Corp.*, 47 Ariz. 477; 56 P. 2d 1041; *Regional Agricultural Credit Corp.* v. *Elston, Prince & McDade,* 183 So. 91 (La.). Cf. *Lewis* v. *Regional Agricultural Credit Corp.*, 92 F. 2d 1008 (C. C. A. 10th). To imply for Regionals a unique legal position compared with those corporations to whose purposes Regional is so closely allied,[7] is to infer Congressional idiosyncrasy. There is a much more sensible explanation for the failure of Congress to bring Regional by express terms within its emphatic practice not to confer sovereign immunity upon these government corporations. Congress had a right to assume that the characteristic energies for corporate enterprise with which

[6] Section 201 (e) of the statute, providing for Regional Agricultural Credit Corporations, covers less than half a page of a fifteen-page statute.

[7] See, e. g., Federal Land Banks, 39 Stat. 360, 363; Joint Stock Land Banks, 39 Stat. 360, 374; Federal Intermediate Credit Banks, 42 Stat. 1454, 1455; National Agricultural Credit Corporations, 42 Stat. 1454, 1462; Production Credit Corporations, Production Credit Associations, Central Bank for Coöperatives, Regional Banks for Cooperatives, 48 Stat. 257, 266; Federal Farm Mortgage Corporations, 48 Stat. 344, 345; National Mortgage Associations, 48 Stat. 1246, 1253. Congress itself recognized the identity of purpose in these various corporations. 48 Stat. 267, 268. Note, too, that Production Credit Corporations, successors to Regional Agricultural Credit Corporations are subject to suit. 48 Stat. 257, 266.

a few months previously it had endowed Reconstruction would now radiate through Reconstruction to Regional.

To give Regional an immunity denied to more than two score corporations, each designed for a purpose of government not relevantly different from that which occasioned the creation of Regional, is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none. A fair judgment of the statute in its entire setting relieves us from making such an imputation of caprice.

The legal position of Regional is, therefore, the same as though Congress had expressly empowered it "to sue and be sued." The scope of this liability remains to be explored.

Regional claims immunity in any event because Congress has not subjected it to suit "in tort." It is assumed that the present action is not one upon a contract, express or implied, and, therefore, outside the purview of "to sue and be sued." The premise is not valid, nor does the conclusion follow.

The transaction which gave rise to the controversy was a bailment of livestock for hire, and the cause of action lack of reasonable diligence by the bailee. Ever since the fifteenth century, according to Maitland, there were "actions against bailees for negligence in the custody of goods entrusted to them, and here also it was necessary to allege an assumpsit"—the having undertaken to do something. Maitland, Equity, Lecture VI, pp. 362, 363; Maitland, The Forms of Action at Common Law, Lecture VI, pp. 68, 69. That Regional's failure properly to feed and water the livestock entrusted to it by the cattle-feeding contract was not a wrong disassociated from carrying out the very transaction which brought it into existence, is evident from the recognized liability of the United States itself as lessee and bailee even under the

explicit restrictions of the Court of Claims Acts.[8] Both this Court and the Court of Claims have sustained actions not dissimilar from the present. They have recognized that the breach of implied duty of a lessee "not to commit waste, or suffer it to be committed," *United States* v. *Bostwick,* 94 U. S. 53, 68, and of a bailee not to neglect "to exercise ordinary care and skill," *Gulf Transit Co.* v. *United States,* 43 Ct. Cl. 183, 199, are duties that have their source in contract even though the guilty agents may be merely tort-feasors. To be sure, the common law fiction of waiving the tort and suing in assumpsit cannot be used as an evasion of the limited liability created by the Court of Claims Acts. *Bigby* v. *United States,* 188 U. S. 400; *United States* v. *Minnesota Investment Co.,* 271 U. S. 212, 217. But where the wrong really derives from an undertaking, to stand on the undertaking and to disregard the tort is not to invoke a fictive agreement. It merely recognizes a choice of procedural vindications open to the injured party.

To assume that Congress in subjecting these recently created governmental corporations to suit meant to enmesh them in these procedural entanglements, would do violence to Congressional purpose. When it chose to do so, Congress knew well enough how to restrict its consent to suits sounding only in contract, even with all the controversies in recondite procedural learning that this might entail. It did so with increasing particularity in the successive Court of Claims Acts. 10 Stat. 612; 24 Stat. 505; 28 U. S. C. §§ 41 (20), 250 (1). In the light of these statutes it ought not to be assumed that when

[8] The Act of February 24, 1855 (10 Stat. 612), establishing the Court of Claims allowed suit for claims "upon any contract, express or implied . . ." The Act of March 3, 1887 (24 Stat. 505) allowed suits for claims "upon any contract, express or implied . . . or for damages, liquidated or unliquidated, in cases not sounding in tort. . . ." See 28 U. S. C. §§ 41 (20), 250 (1).

Congress consented "to suit" without qualification, the effect is the same as though it had written "in suits on contract, express or implied, in cases not sounding in tort." No such distinction was made by Congress, and no such interpolation into statutes has been made in cases affecting government corporations incorporated under state law or that of the District of Columbia.[9] There is equally no warrant for importing such a distinction here. To do so would make application of a steadily growing policy of governmental liability contingent upon irrelevant procedural factors. These, in our law, are still deeply rooted in historical accidents to which the expanding conceptions of public morality regarding governmental responsibility should not be subordinated.

Congress has embarked upon a generous policy of consent for suits against the government sounding in tort even where there is no element of contract. It has sanctioned suits for patent infringement, 36 Stat. 851, provided for compensation for the disability or death of a government employee "while in the performance of his duty," 39 Stat. 742, authorized payment for damage to property by the Army Air Service. 41 Stat. 109. These and other public statutes and many private bills were founded on considerations thus generalized in a Report of the Senate Committee on Claims:

"In other words, it may be said that Congress has recognized the general liability of the Government within maximum amounts for the negligence of officers and employees of the United States, but the machinery for determining that liability is defective and results in overburdening the Claims Committee of Congress and Congress itself with the consideration of tort liability claims and with injuries to the claimants.

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[9] The cases are collected in Thurston, *Government Proprietary Corporations* (1935) 21 Va. L. Rev. 351, 378, *et seq.*

"This proposed legislation is designed to relieve the situation by utilizing the machinery of the Accounting Office and judicial branches of the Government in the assistance of Congress." Senate Report No. 1699, 70th Cong., 2d Sess., p. 4. See also Senate Report No. 658, 72d Cong., 1st Sess., p. 3.

Acting on these views, Congress passed a general court of claims bill, which, however, at the close of the session failed of enactment by President Coolidge's pocket-veto. H. R. 9285, 70th Cong., 2d Sess.; 70 Cong. Rec. 4836.[10] Congress has thus clearly manifested an attitude which serves as a guide to the scope of liability implicit in the general authority it has conferred on governmental corporations to sue and be sued. We should be denying the recent trend of Congressional policy to relieve Regional from liability. This compels us to reverse the judgment of the court below.

Reversed.

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[10] That objections to the administrative features of the bill were the probable reasons for the veto is indicated by a memorandum of Attorney-General Sargent, for which see McGuire, *Tort Claims against the United States* (1931) 19 GEO. L. J. 133, 134, 135.